



General Services Administration
Office of General Counsel
Washington, DC 20405

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August 26, 1996

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
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Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

DOCKET FILE COPY ORIGINAL

Subject: Implementation of the Telecommunications Act
of 1996: Accounting Safeguards Under the
Telecommunications Act of 1996,
CC Docket No. 96-150.

Dear Mr. Caton:

Enclosed please find the original and thirteen copies of the General Services Administration's Comments for filing in the above-referenced proceeding.

Sincerely,

Jody B. Burton
Assistant General Counsel
Personal Property Division

Enclosures

cc: International Transcription Service
Ernestine Creech (diskette)

Noted by [unclear]
Date [unclear]

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

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AUG 26 1996

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

In the Matter of)

Implementation of the)
Telecommunications Act of 1996:)

Accounting Safeguards Under the)
Telecommunications Act of 1996)

CC Docket No. 96-150

**COMMENTS OF THE
GENERAL SERVICES ADMINISTRATION**

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August 26, 1996

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Summary

As the agency vested with the responsibility for representing the customer interests of the Federal Executive Agencies in regulatory proceedings, GSA urges the Commission to base its accounting safeguards on Parts 32 and 64 of its rules. By adopting firm but fair accounting safeguards, the Commission will promote effective competition while ensuring the maintenance of just and reasonable rates for the users of regulated services.

In anticipation of BOC provision of regulated, interLATA services, the Commission should modify its rules to require LECs to classify any regulated service other than local exchange and exchange access as nonregulated for Title II accounting purposes. The Commission should also require LECs to record imputed access charges as expenses to be directly assigned to nonregulated.

The Commission should bring uniformity to its rules by requiring all affiliate transactions that do not involve tariffed assets or services to be recorded at the higher of cost and estimated market value when the carrier is the seller or transferor, and at the lower of cost and estimated market value when the carrier is the buyer or transferee. In the determination of cost, all LECs should use the prescribed interstate rate of return.

The Commission should not allow its accounting safeguards to be influenced by its interstate price cap system. Pursuant to statute, and because over three-quarters of LEC costs are subject to state jurisdiction, the Commission must prescribe proper cost allocation methods regardless of its chosen interstate tariff mechanism. The Commission should, however, retain its rule that the reallocation of amounts from regulated to nonregulated will result in a lowering of LEC price caps.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

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CC Docket No. 96-150

**COMMENTS OF THE
GENERAL SERVICES ADMINISTRATION**

The General Services Administration ("GSA"), on behalf of the Federal Executive Agencies, submits these Comments in response to the Commission's Notice of Proposed Rulemaking ("NPRM"), FCC 96-309, released July 18, 1996. This NPRM proposes rules to implement the accounting safeguards provisions of Sections 260 and 271 through 276 of the Telecommunications Act of 1996 ("1996 Act").¹ These sections address Bell Operating Company ("BOC") and, in some cases, incumbent local exchange carrier ("LEC") provision of particular telecommunications and information services.

I. Introduction

Pursuant to Section 111(a)(1) of the Federal Property and Administrative Services Act of 1949, as amended 40 U.S.C. 759(a)(1), GSA is vested with the responsibility to

¹Telecommunications Act of 1996, Pub. L. No. 104-104. 110 Stat. 56 ("1996 Act") to be codified at 47 U.S.C. §§ 151 et seq. The 1996 Act amended the Communications Act of 1934 ("Communications Act").

represent the customer interests of the Federal Executive Agencies ("FEAs") before Federal and State regulatory agencies.

Collectively, the FEAs are probably the largest user of telecommunications services in the nation. As their representative, GSA commends the Commission for initiating this proceeding focusing on accounting safeguards. The Commission states:

As discussed more fully below, these safeguards are intended both to protect subscribers to regulated monopoly services provided by the BOCs and, in some cases, other incumbent local exchange carriers against the risk of being forced to "foot the bill" for the carriers' entry into, or continued participation in, competitive services, and to promote competition in new markets by preventing carriers from using their existing market power in local exchange services to obtain an anticompetitive advantage in those new markets the carriers seek to enter.²

By adopting firm but fair accounting safeguards, the Commission will promote effective competition while ensuring the maintenance of just and reasonable rates for the users of regulated services. To this end, GSA submits these comments on the Commission's various proposals.

II. The Commission Should Base Its Accounting Safeguards On Parts 32 And 64 Of Its Existing Rules.

The Communications Act expressly requires the Commission to maintain proper cost allocation standards:

The Commission shall, by rule, prescribe a uniform system of accounts for use by telephone companies. Such uniform system shall require that each common carrier shall maintain a system of accounting methods, procedures, and techniques (including accounts and supporting records and memoranda) which shall ensure a proper allocation of all costs to and among telecommunications services, facilities, and products (and to and among

²NPRM, para. 4.

classes of such services, facilities, and products) which are developed, manufactured, or offered by such common carriers.³

To meet this requirement, the Commission adopted Parts 32 and 64 of its rules.⁴ The cost allocation and affiliate transaction rules prescribed in Parts 32 and 64 were designed to keep LECs from imposing the costs and risks of their competitive ventures on telephone ratepayers, and to ensure that ratepayers share in the economies of scope LECs realize when they expand into additional enterprises.⁵

These accounting safeguards are well established, and proved effective prior to the introduction of LEC video programming services. The Commission is now considering modifications in these rules in a separate proceeding to prevent telephone subscribers from "footing the bill" for such services.⁶ GSA filed Comments in that proceeding on May 28, 1996, and Reply Comments on June 12, 1996.

Assuming an appropriate resolution to the issues surrounding the provision of LEC video programming services, GSA supports the Commission's tentative conclusion that it should rely on Parts 32 and 64 as the basis of its accounting safeguard requirements.⁷ As the Commission notes, the LECs have implemented internal cost allocation systems

³47 U.S.C. § 220(a)(2).

⁴47 C.F.R., Parts 32 and 64.

⁵NPRM, para. 11. Contrary to the wording of this paragraph, these rules protect both interstate and intrastate telephone ratepayers from cross-subsidization. Nonregulated costs are removed pursuant to Part 64 prior to jurisdictional separations.

⁶Allocation of Costs Associated with Local Exchange Carrier Provision of Video Programming Services, CC Docket No. 96-112, Notice of Proposed Rulemaking, FCC No. 96-214, released May 10, 1996.

⁷NPRM, para. 11.

to ensure compliance with its existing rules, and redesigning these systems to accommodate a fundamentally different cost allocation approach would impose substantial administrative and financial costs on the carriers and, ultimately, telephone ratepayers.⁸

III. The Commission Should Require All LECs To Classify Any Regulated Services Other Than Local Exchange And Exchange Access As Nonregulated For Title II Accounting Purposes.

The Commission notes that the BOCs may be allowed to provide certain regulated, interLATA services on an integrated basis, subject to dominant carrier regulation.⁹ The Commission seeks comment on the proper accounting in such circumstances.¹⁰

GSA recommends that the Commission require all LECs to classify any regulated services other than local exchange and exchange access to nonregulated for Title II accounting purposes. Such treatment will ensure that the full force of its Part 32 and Part 64 rules is brought to bear on the prevention of cross-subsidies. Only in this way will telephone ratepayers be protected and full and open competition promoted in the interLATA market.

IV. All LECs Should Record Imputed Access Charges As Expenses To Be Directly Assigned To Nonregulated.

The Commission invites comments on how BOCs should account for imputed access charges in connection with their provision of interLATA services.¹¹

⁸Id., para. 28.

⁹Id., para. 39.

¹⁰Id.

¹¹Id., para. 41.

GSA recommends that the Commission require all LECs to record imputed access charges as expenses to be directly assigned to nonregulated. This methodology is simple to implement and audit, and would ensure that the LECs charge themselves the same amount as they charge unaffiliated interexchange carriers for access services.

V. Affiliate Transactions That Do Not Involve Tariffed Assets Or Services Should Be Recorded At The Higher Of Cost And Estimated Market Value When The Carrier Is The Seller Or Transferor, And At The Lower Of Cost And Estimated Market Value When The Carrier Is The Buyer Or Transferee.

The Commission notes that its current rules do not provide uniform methods for all affiliate transactions.¹² In particular, if an asset transfer was neither tariffed nor subject to prevailing company prices, the Commission required carriers to record the transfer at the higher of net book cost and estimated fair market when it is the seller, and at the lower of net book cost and estimated fair market value when the carrier is the purchaser. In contrast, the Commission required carriers to record all non-tariffed services other than those having prevailing company prices at the providers' fully distributed costs. The Commission proposes to revise its rules to require all affiliate transactions that do not involve tariffed assets or services to be recorded at the higher of cost and estimated fair market value when the carrier is the seller or transferor, and at the lower of cost and estimated fair market value when the carrier is the buyer or transferee.¹³ The Commission would continue to define the applicable cost benchmarks as net book cost for asset transfers and fully distributed costs for service transfers.

¹²Id., para. 76.

¹³Id., para. 78.

GSA supports this proposal. The current rules may reward a carrier's imprudent acts of buying services for more than, and selling services for less than, fair market value. This unintended consequence of the Commission's current rules should be promptly eliminated by the adoption of the Commission's proposed modification.

VI. The LECs Should Use The Prescribed Interstate Rate of Return For Valuing Transactions With Their Affiliates.

The Commission's current rules require carriers to use the authorized interstate rate of return in calculating their fully distributed costs for affiliate transaction purposes.¹⁴ The Commission proposes to retain this ruling.

GSA supports this proposal. The adoption of numerous rates of return would impose a significant compliance burden on the industry. As the Commission notes, it would have a "difficult, if not impossible, burden if it had to engage in numerous prescription proceedings and then monitor compliance with each."¹⁵

VII. The Accounting Safeguards Adopted Should Not Be Influenced By The Commission's Interstate Price Cap System.

The Commission states:

The rules we adopt to prevent the subsidies prohibited by Sections 260 and 271 through 276 of the 1996 Act will be shaped by our price cap regulations. A "pure" price cap system would permanently eliminate sharing, claims for exogenous treatment, and the need for the Commission to consider adjustments to productivity factors. Under pure price cap regulation, there

¹⁴Id., para. 87.

¹⁵Id.

would be few incentives to subsidize nonregulated services with revenues from regulated telecommunications services and the need for accounting safeguards to ensure against subsidies would be greatly diminished, unless, of course, there are other ways in which the carrier's entitlement to any revenues is dependent upon the costs the carrier classifies as regulated.¹⁶

GSA respectfully submits that the Commission has put the "cart before the horse."

As described above, the Commission has an explicit statutory responsibility to "maintain a system of accounting methods . . . which shall ensure a proper allocation of all costs. . . ."¹⁷ This mandate takes precedence over the particular set of rules the Commission chooses for the regulation of interstate tariffs, and should not be influenced by them. Indeed, more than three-quarters of all LEC costs are subject to state jurisdiction and are entirely unaffected by the Commission's interstate price cap system, whether "pure" or not. While GSA has long supported price caps as an alternative to rate of return regulation, it seriously doubts that any such plan will eliminate the need for proper cost allocation as long as the LECs possess significant market power over exchange and exchange access services.

GSA's comments in this proceeding are intended to assist the Commission in the establishment of accounting safeguards which will protect ratepayers and promote competition. The Commission must not adopt ineffective accounting safeguards under the misguided belief that its interstate price cap system will somehow, someday reduce the harm such rules would cause.

¹⁶Id., para. 121.

¹⁷47 U.S.C. § 220(a)(2).

**VIII. When Costs Are Reallocated From Regulated To
Nonregulated An Exogenous Factor Reduction
Should Be Made To Interstate Price Caps.**

The Commission's current rules result in exogenous price cap treatment to the extent that amounts are reallocated from regulated to nonregulated activities.¹⁸ Such treatment results in a reduction of price caps in proportion to the amounts reallocated. The Commission seeks comments on this rule and its application to "new investment."¹⁹ The purpose of this rule is to prevent LECs from building plant as regulated and then using it for nonregulated purposes without reflecting this change in its price caps. Without exogenous treatment, ratepayers would be forced to effectively subsidize LEC nonregulated ventures.

It should be noted, however, that this rule applies only to reallocations of plant initially charged to regulated. New investment charged to nonregulated does not result in an exogenous adjustment.

GSA believes that this rule is essential to the prevention of cross-subsidy schemes, and it should not be modified in any way.

¹⁸Id., para. 123. The Commission refers to this as a "strict reading" of its rules. In fact, it is the only reading possible.

¹⁹Id.

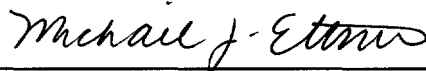
IX. Conclusion

As the agency vested with the responsibility for representing the customer interests of the Federal Executive Agencies in regulatory proceedings, GSA urges the Commission to base its accounting safeguards on Parts 32 and 64 of its rules as modified in accordance with GSA's comments in this proceeding.

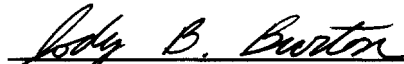
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August 26, 1996

CERTIFICATE OF SERVICE

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A handwritten signature in cursive script, reading "Richard B. Lee", is written over a horizontal line.